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No. 93-455

In The
Supreme Court of the United States
October Term, 1993

VAUGHN KILLEEN, MIKE ROBERTS AND ADA COUNTY, IDAHO

Petitioners,

v.

SUE HALLSTROM,

Respondent.

Brief in Opposition
to a Petition for a Writ of Certiorari
To the United States Court of Appeals
for the Ninth Circuit

BRIEF FOR RESPONDENT

Sue Hallstrom
In Propria Persona
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STATEMENT OF THE CASE

Factual Background

Petitioners' "Statement of the Case" contains factual errors and misrepresentations, as does the remainder of the Petition. For example, Petitioners state Hallstrom was arrested for "resisting and obstructing" when in fact the charges were "obstructing and delaying" and Hallstrom submits that there is a vast difference between the two, that the arrest was precipitated on conversation which the officer did not like, that no resistance was offered, and none was alleged in any pleadings prior to this Petition. It should also be noted that all charges were later dropped.

Petitioners also state Hallstrom's refusal to submit to booking procedures was based upon her "belief that her first allegiance is to Higher Moral Law..." Contrary to this, from the first time booking was offered to her at the jail, Hallstrom told her captors that she would not submit to the booking process until they obtained a court order, which they promised to do, but never did. In her repeated objections to the booking process, she never once refused based on a "Higher Moral Law," she refused based upon the law of the state and the law of the land, as Hallstrom knew, for example, that Idaho Code 19-625 requires a court order before the taking of fingerprints, and also that in *Davis v. Mississippi,* 384 U.S. 436, 728, this court said:

> "For this same reason, the general requirement that the authorization of a judicial officer be obtained in advance of detention would seem not to admit of any exception in the fingerprinting context."

Petitioners state Hallstrom "refused until June 24, 1987, at which time she submitted to the booking process." The implication is that Hallstrom held out until June 24, and then

arbitrarily decided to comply, but this was not the case. Hallstrom never "refused" but continued to state she would submit when a proper court order was presented to her. On June 24, 1987, a court order was presented to Hallstrom and she submitted to booking.

Petitioners then tell the court that Hallstrom was not the first person "who refused standard booking procedures ... based upon their 'inalienable right to not submit to man-made law.'" Again, at the jail, Mrs. Hallstrom based her refusal on the laws of the state and the laws of the land which is well documented in her pleadings. This statement, like others throughout the Petition, seems to be a deliberate attempt to mislead the Court as to the facts of this case.

In the other local District Court cases (Shaw, Gibson & Mendoza) found at Petitioners' Appendices E, F, and G, those refusals were also based upon law, not on some "inalienable right to not submit to man-made laws," and the Plaintiffs' arguments for noncompliance in those cases were based upon man-made law -- not esoteric law.

ARGUMENT FOR DISALLOWANCE OF WRIT

Petitioners ask that their writ be granted on two reasons. First so that the court could decide what is "clearly established law" for purposes of qualified immunity. Hallstrom contends that in this case the law was clearly established.

Secondly so that the court can consider whether the 9th Circuit Panel's legal analysis is consistent with this court's precedents which instruct that the law to be considered in determining whether or not a right has been violated must be particularized. However, their arguments are based upon the actual title of their second argument: "THE NINTH CIRCUIT PANEL ERRED IN ITS LEGAL ANALYSIS IN DETERMINING WHETHER ROBERTS WAS ENTITLED TO QUALIFIED IM-

MUNITY." In this regard Hallstrom contends that the Panel did not err.

I

THE NINTH CIRCUIT PANEL DID NOT ERR WHEN IN DETERMINING CLEARLY ESTABLISHED LAW IT REJECTED APPLICABLE LOCAL UNITED STATES DISTRICT COURT PRECEDENT

Petitioners' argument hinges upon the question, what is "clearly established law" in this case? Petitioners contend that the Panel erred in refusing to consider District Court opinions and contend that U.S. District Court decisions made in 1985 are "clearly established law" and should take precedent over Ninth Circuit and this court's decisions.

Then Petitioners point out how this court has, in the past, considered United States District Court decisions in "determining whether there was clearly established law." It seems all too obvious that this court can reach down to District Courts and use their decisions as a basis to determine "whether there was clearly established law" when those decisions are valid decisions. But it is difficult to believe that this court would use District Court decisions to determine "whether there was clearly established law" when those decisions are invalid or flawed.

In this regard, the 9th Circuit Panel did, in fact, consider the Idaho District Court opinions and found them lacking when they stated "The district court's holding that the right to book a person lawfully arrested justified detaining her without limit (and without access to a magistrate to pass on the lawfulness of the arrest) in order to 'coerce' compliance with booking, Order Granting Defendants' Motions for Summary Judgment

at 23, contained in ER, is simply wrong." Petitioners' writ, App. 20

In addition, The 9th Circuit Panel also said of the local District court cases (Shaw, Gibson & Mendoza, found at App. E, F & G of Writ, App. 72, 74, 77):

> "In neither case (Shaw & Gibson) did the district court consider Gerstein or analyze the Ada County defendants' actions in light of clearly established Ninth Circuit and Supreme Court law. While at one level it may seem harsh not to allow law enforcement officers to rely on local judicial officers' opinions, the Supreme Court requires what is essentially an artificial test, one that specifically looks to objective, not subjective, reasonableness. A judicial officer's misjudgment will not obviate or excuse another official's obligation to act with objective reasonableness....Under the objective test, an official is charged with knowledge of controlling Supreme Court and Ninth Circuit precedent. This is not a case where the underlying facts are unclear or in dispute." (Writ, App. 26)

Petitioners argue that the 9th Circuit Panel disregarded *Anderson* (Writ, p. 6) which is a U.S. Supreme Court case, so it is obvious that Petitioners have a double standard: they want to quote high court cases, but want the 9th Circuit Court to look to District Court precedent. In this regard it is somewhat ironic that Petitioners list seven court cases in their "Table of Authorities," six of which are U. S. Supreme Court cases and one 9th Circuit opinion -- and no District Court cases. If Petitioners feel so strongly about District Court Cases, why do they now rely on higher court decisions?

Petitioners argue that since this court has reached down to District Courts to determine "whether there was clearly established law," then they conclude that "it is inconsistent with that purpose to ask government officials to disregard existing

United States District Court cases which specifically sanction their conduct."

Petitioners are asking the court to sanction their policy of picking and choosing what court and what cases suit their fancy, regardless of whether or not those decisions are consistent with higher court decisions. Hallstrom wonders whether the Sheriff would be very sympathetic with a deputy who did something in violation of his personal written orders, and defended his action based upon something a sergeant had said. This is the old and worn Nurembourg defense: "I was just doing my job when I turned the gas valves." These arguments did not work then, they didn't work for Lieutenant Calley of Vietnam fame, and they cannot be allowed to work in this case.

Petitioners then emphasize the importance of the local District Court's decisions to Petitioners' defense, and then give us a brief history of the three cases. But what is amazing is that they actually quote the local court as follows:

> "...Nor does 'incommunicado incarceration' of a person who refuses to comply with booking procedures constitute a violation of either substantive or procedural due process...It is not unreasonable for the jailers to incarcerate a person who might otherwise be able to post bail subsequent to booking, as a means of coercing that person into compliance with the booking procedures." (Writ, Appendix G, App. 78)

If it is not unreasonable to hold Mrs. Hallstrom in jail until she complies with their internal procedures (which they said they would do whether it was days, weeks, months, years, or life), then it could be argued that it is not unreasonable to hold Mrs. Hallstrom in jail until she submits to rape.

Such arguments are absurd, and it was precisely because of this obvious and flagrant violation of Mrs. Hallstrom's rights that the Ninth Circuit Panel stated (as previously quoted):

> "The district court's holding that the right to book a person lawfully arrested justified detaining her without limit (and without access to a magistrate to pass on the lawfulness of the arrest) in order to "coerce" compliance with booking, Order Granting Defendants' Motions for Summary Judgment at 23, contained in ER, is simply wrong." Writ, App. 20

But the Panel went on to state:

> "While the booking process itself (and its attendant fingerprinting and photographing) may be entirely proper, it does not trump the Fourth Amendment proscription against over-long detention based solely on a probable cause determination made by the arresting officer." Writ, Supra

Before continuing to analyze Petitioners' last argument on this subject, the issue of what is "clearly established law" must be addressed. In addressing this subject there are two standards to consider: 1) the federal standard, and 2) the state standard.

The Federal Standard

Gerstein (decided in 1974), in discussing pretrial custody stated:

> "Whatever procedure a State may adopt, it must provide a fair and reliable determination of probable cause as a condition for any significant pretrial restraint of liberty, and this determination must be made by a judicial officer either before or promptly after arrest." *Gerstein v. Pugh,* 420 U.S. 125, 1974)

The Panel, in addressing the federal standard, pointed out that:

> "Recently the Supreme Court indicated that a jurisdiction which 'provides judicial determinations of probable cause within 48 hours of arrest will, as a general matter, comply with the promptness requirement of *Gerstein*.' County of Riverside v. McLaughlin, 111 S. Ct. 1661, 1670 (1991)." (Writ, App. 16)

But regardless of the 48-hour rule and no matter how "promptness" is defined under *Gerstein,* the willingness of the U.S. District Court and County officials to hold Mrs. Hallstrom indefinitely in an "incognito incarceration" status until she complied with the booking process, is more than unreasonable -- it is shocking to the senses -- it is ad absurdum.

Nevertheless, Petitioners would have us believe that it is reasonable for an official to rely upon local U.S District Court decisions when qualified immunity is asserted and thus need not consider higher court decisions. This argument is likewise unreasonable and absurd.

According to the Internal Revenue Service, it is reasonable for them not to be able to answer your tax questions, yet it is unreasonable when we, not knowing the same answer, fail to properly fill out a tax form.

According to the BATF, it is reasonable that they cannot answer specific questions pertaining to gun laws, yet it is unreasonable when we, not knowing the same law, violate gun laws.

From Mrs. Hallstrom's position it was unreasonable to expect her to know that when she failed to file a charge against officials in compliance with state procedural requirements, all state law claims are time-barred, especially when that ruling is in an obscure court case and cannot be found in any statute. However it was reasonable, from the perspective of the 9th

Circuit and Petitioners, to argue and decide against her state claims based upon a 9th Circuit opinion.

Since Petitioners have no problem with Hallstrom being held to the 9th Circuit's ruling on this subject, they should have no problem understanding that *Gerstein* and other higher court cases are controlling rather than decisions of the local District Court.

By their logic Rosa Parks should still be riding in the back of the bus in Birmingham, Alabama, because the local District Court said it was all right. And if their logic should be adopted, why even bother having circuit courts of appeal or a Supreme Court for that matter.

Thus, if Hallstrom, who is just a citizen, can be held to the ruling of some obscure court case, then it is only reasonable that public officials who are supposed to have a knowledge of the law be held to higher rulings.

The State Standard

The Federal courts have not been dogmatic in defining "promptness," allowing states some degree of flexibility based upon their particular situations and problems, but this court found it necessary to establish a 48-hour rule in *McLaughlin.* When states establish standards they cannot broaden the federal standard but they can narrow them. Thus the Federal standard of 48 hours is met by a state which complies in 40 hours, 36 hours, 24 hours, etc.

While Idaho state claims have been barred in this case Idaho law becomes important in determining what is "settled law" and to determine what should be reasonable to an officer, because if the Idaho standard is narrower than the Federal standard, then Petitioners' claims are invalid.

The 9th Circuit understood the narrowness of Idaho's standard and on page 3585 (Writ, App. 14) of their decision they stated: "The discretion is very narrow: the arrested person either must be released or taken before a magistrate." It should also be pointed out that nowhere in the Idaho Code is discretion given to arresting officers to take anyone to jail. Nine times the Idaho Code addresses officers' duties in this regard and they all say the same thing -- take the individual "immediately" or "without unnecessary delay" before a magistrate (see Appendix).

The 9th Circuit also took into consideration the Idaho Criminal Rules of Procedure, which address taking an individual before a magistrate, quoting the rule as follows: "In no event shall delay be more than twenty-four (24) hours following the arrest excluding Saturdays, Sundays, and holidays." (Writ, App. 14, footnote 7)

In addition, according to the *Ada County Jail Handbook*, if you are brought to jail prior to 6 a.m., you will appear before a magistrate at 3 p.m. that same day:

> "ARRAIGNMENT: All persons held in the jail will normally attend arraignment at the earliest regularly scheduled arraignment time available. Arraignments are conducted Monday through Friday at 3:00 p.m. All persons booked into the jail before 6:00 a.m. will attend arraignment on that day. Persons booked into the jail after 6:00 a.m. will attend arraignment the next day." Ada County Jail Inmates' Handbook, p. 12

According to the Sheriff's own written policy, he has established an in-house nine-hour rule for those booked prior to 6:00 a.m. In addition, the Sheriff's policy, as written in the Handbook quoted above, provides that if one is booked after 6:00 a.m., he will not be arraigned until after 3:00 p.m. the

following afternoon, establishing a 33-hour rule, which is in contravention of the 24-hour rule established by the judiciary.

In any event, it is only reasonable to expect that the Sheriff and the jail commander are fully aware of rules that they have written, and based upon these rules, they should have known that to incarcerate Hallstrom for four days without taking her to a magistrate was unreasonable.

This brings us to Petitioners' final argument on this subject. They argue that "when Roberts was confronted with Hallstrom's arbitrary refusal to submit to standard booking procedures, the decision to detain her was not made in a vacuum. It was made on existing law."

Once again we find Petitioners misleading the court with their choice of words. Hallstrom did not "arbitrarily" refuse to submit but demanded a court order, which she considered appropriate since no Idaho law requires that she submit to booking, and because she had not been taken before a magistrate as demanded. However, upon presentation of a court order, she did submit. It might also be stated that this was 6 days after being arrested and two days after being released on bail by a magistrate, but even in spite of being released on bail she continued to be held in jail.

It has been clearly shown that "settled law" in regards to taking an arrested person before a magistrate in Idaho is much narrower than the Federal 48-hour standard and agrees more closely with the word "promptness" as found in *Gerstein.* It is only reasonable to expect Idaho officials to be knowledgeable of Idaho law on the subject whether or not they plead ignorance of the Federal standard. It is also reasonable to expect officers to comply with state law and to have taken Hallstrom before a magistrate "immediately" or "without unnecessary delay." Since idaho law is so well established and

clear on the subject, it is reasonable to expect Idaho officials to know that holding Mrs. Hallstrom in "incognito incarceration" until she complied with the booking process was unreasonable.

In conclusion, if officers had met state standards in taking Mrs. Hallstrom before a magistrate, they would also have complied with Federal standards. Therefore, Petitioners' arguments as to what is "clearly established law" are frivolous, without foundation or merit.

As stated in *Gerstein:* "Once the suspect is in custody, however, the reasons that justify dispensing with the magistrate's neutral judgement evaporate....When the stakes are this high, the detached judgment of a neutral magistrate is essential if the Fourth Amendment is to furnish meaningful protection from unfounded interference with liberty." 420 U.S. 114

Thus this Court should uphold its tradition of securing the rights of individuals against the "lawless conduct" of government agents and deny the Petition.

II

THE NINTH CIRCUIT PANEL DID NOT ERR IN ITS LEGAL ANALYSIS IN DETERMINING WHETHER ROBERTS WAS ENTITLED TO QUALIFIED IMMUNITY

Petitioners' "Argument For Allowance of Writ" (page 6) points out that the Ninth Circuit Panel "apparently did not locate any cases which address the narrow question whether Roberts could detain Hallstrom until she submitted to booking." Then they state that "the Panel looked to the law on the

broader issue of the right to be taken immediately before a magistrate."

This last statement is an admission that Petitioners knew and understood that Hallstrom had to be taken "immediately" before a magistrate. Notwithstanding that, the Panel need not find cases that allow detention "until she submitted to booking," as the Panel, in addressing that issue, answered that question as follows:

> "Hallstrom should not be foreclosed from presenting evidence that might establish liability under *Bell*. The defendants used detention as a means to 'coerce' compliance with booking procedures. The detention itself (and her lack of access to a magistrate or release on bail) could be punishment for failing to cooperate. Especially given the alternatives available (including booking over her objections, requesting a booking order, partial booking), six days' incarceration is 'excessive' in relation to its purpose. While the government has a legitimate interest in orderly booking, it does not command as high a priority, for example, as ensuring presence at trial or maintaining jail security. 'Effective management' might have been achieved by choosing not to confine Hallstrom (and releasing her on the citations or the bail set by the judge) or by employing the alternatives available to effectuate booking without detention." (Writ, App. 30-31)

In these arguments (Writ, p. 10), Petitioners attempt to accuse the Circuit Panel of over-generalizing the "clearly established law inquiry." They then try to particularize the issues to "Hallstrom's 'right' to not submit to the booking process verses Ada County's right to detain her until she did submit."

While Petitioners would have the court believe that the Circuit Panel "took it upon itself to frame the issue," this issue

was clearly found in the local District Court's Decision, but now Petitioners attempt to frame a different issue. Petitioners never even brought up any arguments on their alleged right to detain Hallstrom until she submitted to booking, until their request for rehearing before the 9th Circuit, which was denied. So, since this was never an issue before the Panel, the issue could not be considered and has no merit at this time.

Petitioners also attempt to mislead this court and put words in Mrs. Hallstrom's brief which do not exist in footnote 1 (Writ, p. 11) where Petitioners say that Hallstrom "acknowledged in her brief to the Ninth Circuit that her right to be taken before a magistrate was not even an issue to be decided." Hallstrom is mystified where Petitioners got such a statement, unless it was taken from her Brief where she quoted Kanekoa and Gerstein and stated:

> "The problem with Kanekoa and Gerstein is that it pertains to time elements from arrest until a magistrate conducts a probable cause hearing, which is not really relevant in this case as Mrs. Hallstrom has never questioned the timeliness of probable cause hearings." Brief of Appellants, p. 27, Hallstrom v. Garden City, et als, Ninth Circuit Court of Appeals, No. 91-35662

The reason for this statement was because in Idaho the law requires a person to be taken before a magistrate but the law does not address the reason for being taken before a magistrate (i.e. probable cause hearing, bail setting, arraignment, trial, etc.). In Idaho probable cause hearings are held ex parte between a magistrate and a prosecuting attorney and no arresting officers or defendants are present. The first time Hallstrom appeared before a magistrate was not for a probable cause hearing, but for bail setting and arraignment. So Hallstrom never appeared before a magistrate for a probable cause hearing and in this regard, being taken before a

magistrate in conjunction with a "probable cause hearing" was never an issue to be decided. Since Idaho Code does not specify the reason for being taken before a magistrate Hallstrom never argued the reason for that appearance. But being taken before a magistrate was an issue and Hallstrom argued that issue for over six pages in her brief.

Next Petitioners state that the Panel rejected a Ninth Circuit Panel's approach to the reasonableness issue in *Hunter,* quoting that case as follows: "...The court should ask whether the agents acted reasonably under settled law in the circumstances...." Then they state that the Panel never asked whether Roberts "acted reasonably under settled law in the circumstances." In addressing this very issue the Panel stated: "A two-part analysis is required: '(1) Was the law governing the official's conduct clearly established? (2) Under that law, could a reasonable officer have believed the conduct was lawful?'"

Then the court went on to show that the law was clearly established stating:

> "The law was clearly settled that Mrs. Hallstrom had a constitutional right to 'prompt' presentation to a judicial officer. We find that no 'objectively reasonable' official could consider the initial four-day period of incarceration 'brief,' or Mrs. Hallstrom's presentation to the state court judge 'prompt.'" (Writ, App. 25)

And finally, Petitioners allege that if the Panel had followed *Hunter,* "it would have found no law supporting Hallstrom's position that she had an inalienable right not to be booked,... no law clearly establishing that Hallstrom could not be detained until she booked,... and no law advising Roberts that he may be subjected to compensatory damages and punitive damages for requiring Hallstrom to be booked." (Writ, P. 12)

First, Hallstrom never claimed an inalienable right not to be booked, she claimed a right to have a court order or a warrant before she submitted to the booking process, so no law need be found on the subject.

Secondly, there is no law stating that Hallstrom could not be detained until she booked. Likewise there is no law stating that Hallstrom could not be detained until she submitted to rape. In addition, from Hallstrom's position, there is no law requiring that she subject herself to the booking process, therefore she demanded a court order or a warrant. Hallstrom would not pay a bill she did not believe she owed without a court order, and neither would she submit to booking without a court order.

And thirdly, there is no law telling Roberts that he may be liable for damages for requiring Hallstrom to be booked. It should be pointed out that damages are not being sought for "requiring Hallstrom to be booked" for she was willing to be booked upon presentation of a court order or a warrant. But damages were sought for unlawful imprisonment, for Roberts should know that only judges pass out life sentences, and he should likewise know that arbitrarily giving Hallstrom a life sentence because she refused to participate in the booking process without a court order, is a violation of her rights.

It could also be pointed out that there is no law telling Roberts that he may be liable for damages for making submission to rape a condition of Hallstrom's release either. But Roberts is well aware that he would be liable under such circumstances and he should be aware that he is liable for damages when he violates the rights of individuals. The sheriff (and Roberts) has the prosecuting attorney and a staff to assist him in knowing these things, but no, he will not find a specific law on the books for every possible violation of rights nor should he expect to find one.

Any reasonable person should know that any "incognito incarceration" smacks of Dark Age tactics. And, based on Idaho law alone, any reasonable officer should know that four days is not "a brief period," and when not complied with, the unlawfulness is clearly unreasonable. While it may be possible to excuse the average policeman under some circumstances, who may not be well trained in constitutional rights, there can be no excuse for people in authority such as the jail commander and the Sheriff who have a duty to know the law, and who have a legal advisor from the prosecuting attorney's office assigned to them on a full-time basis.

Petitioners quote *Harlow*, which also says "government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate 'clearly established' statutory or constitutional rights of which a reasonable person would have known." *(emphasis added) Harlow,* 457 U.S. 800, 801

In *Harlow*, we also see that officials are not even shielded from liability for performing discretionary functions when those functions violate "clearly established statutory or constitutional rights." However, in this case we are not talking about "discretionary functions," we are, contrary to Petitioners' claims, talking about clearly established law of Idaho which is much narrower than the Federal standard. For Petitioners to claim immunity based upon a local Federal Court decision, and in so doing violate all state laws on the issue, is another double standard or perhaps one of convenience to allow them to disregard state law.

Harlow also says "'The greater power of...officials,' we reasoned, 'affords a greater potential for a regime of lawless conduct.' 438 U.S., at 506. Damages actions against high officials were therefore 'an important means of vindicating constitutional guarantees.' Ibid." (p. 809) Hallstrom contends

that this is exactly what is taking place in Idaho when these officials engage in "lawless conduct" by refusing to take arrestees before a magistrate or in lieu issue a citation (Idaho Code 49-1411; see also Idaho Code 19-514, 515, 615 and 49-1405(b), 1406, 1407, 1408, 1409, see Appendix). As the 9th Circuit Panel observed, the District Court is "simply wrong."

The Ninth Circuit Panel seemed to understand the qualified immunity issue when they stated: "A municipality (and its employees sued in their official capacities) may not assert a qualified immunity defense to liability under Section 1983." (citations omitted) Writ, App. 24

Therefore it follows that employees are barred from arguing qualified immunity. The same would be true for persons sued in their individual capacity but qualified immunity turns on "objective reasonableness." If there is no objective reasonableness then persons sued in their individual capacities are likewise barred from claiming "qualified immunity."

The Panel simply recognized this manifest injustice and applied a maxim of equity to the situation. They analyzed the facts and applied them to the jail commander and determined that there was no "objective reasonableness" and therefore the jail commander was barred from claiming such a defense, regardless of the ruling of the district court.

CONCLUSION

For these reasons this Petition for a Writ of Certiorari should be denied.

Respectfully submitted this 4th day of November, 1993.

Sue Hallstrom, Respondent
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APPENDIX

IDAHO CODE 19-514

Defendant to be taken before a magistrate.--- If the offense charged is a felony, **the officer making the arrest must cause the defendant to be taken before the magistrate** who issued the warrant,...

If the offense charged is a misdemeanor, and the defendant is arrested in another county, **the officer must, upon the request of the defendant, take him before a magistrate** in that county, who may admit him to bail...On taking of said bail, the magistrate must certify that fact on the warrant, and deliver the warrant and the undertaking of bail to the officer in charge of the defendant. **The officer must then discharge the defendant from arrest**, and must without delay deliver the warrant and the undertaking to the court at which the defendant is required to appear.

If bail is not forthwith given by the defendant, the officer must cause the defendant to be taken before the magistrate who issued the warrant. (Emphasis added)

IDAHO CODE 19-515

No unnecessary delay -- Attorney may visit defendant. --- The defendant must **in all cases** be taken **before the magistrate without unnecessary delay**, and any attorney at law entitled to practice in the courts of record of the state of Idaho may, at the request of the prisoner after such arrest, visit the person so arrested. (Emphasis added)

IDAHO CODE 19-615

Procedure upon arrest without warrant. --- When an arrest is made without a warrant by a police officer or private person the person arrested must, **without unnecessary delay, be**

taken before the nearest or most accessible **magistrate** in the county in which the arrest was made, and an information, stating the charge against the person, must be laid before the magistrate. (Emphasis added)

IDAHO CODE 19-625

Detention for obtaining evidence of identifying physical characteristics. – (1) A peace officer who is engaged, within the scope of his authority, in the investigation of an alleged criminal offense which is a felony may make written application upon oath or affirmation to a judge of any district court, or magistrates division thereof, for an order authorizing the temporary detention, for the purpose of obtaining evidence of identifying physical characteristics....The order shall require the presence of the identified or particularly described individual at such time and place as the court shall direct for obtaining the identifying physical characteristic evidence. Such order may be issued by the judicial officer upon a showing under oath of all the following:

(A) Probable cause for belief that a specifically described criminal offense which is a felony has been committed....

(2) Any order issued pursuant to the provisions of this section shall specify the following:

(A) The alleged criminal offense which is the subject of the application.

(B) The specific type of identifying physical characteristic evidence which is sought.

(C) The relevance of such evidence to the particular investigation.

(G) The time that such evidence shall be taken except that no person may be detained for a period of more than three (3) hours for the purpose of taking such evidence.

(H) That the individual so identified or described shall have the right to legal counsel during the detention....

IDAHO CODE 49-1405

(formerly 49-1109)

Arrests for serious offenses. -- (a) The authority to make an arrest is the same as upon an arrest for a felony when any person is charged with any of the following offenses:

1. Negligent homicide.

2. Driving, or being in actual physical control, of a vehicle while under the influence of intoxicating liquor.

3. Driving a vehicle while under the influence of any narcotic drug, or driving a vehicle while under the influence of any other drug to a degree which renders the person incapable of safely driving a vehicle.

4. Failure to stop, or failure to give information, or failure to render reasonable assistance, in the event of an accident resulting in death or personal injuries.

5. Failure to stop, or failure to give information, in the event of an accident resulting in damage to a vehicle or to fixtures or other property legally upon or adjacent to a highway.

6. Reckless driving.

7. Fleeing or attempting to elude a police officer.

(b) Whenever any person is arrested as authorized in this section, he shall be taken **without unnecessary delay** before the proper magistrate as specified in section 49-1115, Idaho Code, except that in the case of the offenses designated in paragraphs 5, 6 and 7, **a police officer** shall have the same discretion as is provided in other cases in section 49-1111, Idaho Code. (Emphasis added)

IDAHO CODE 49-1406

(formerly 49-1110)

When person must be taken **immediately before a magistrate**. -- Whenever any person is halted by **a police officer** for any violation of this title amounting to a mis-

magistrate, **he shall be taken without unnecessary delay before the proper magistrate** as specified in section 49-1115, Idaho Code. (Emphasis added)

IDAHO CODE 49-1407

(formerly 49-1111)

When **officer has option** to take person before a magistrate. -- Whenever any person is halted by **a police officer** for any misdemeanor violation of this title and is not required to be taken before a magistrate as hereinbefore provided, the person shall, in the discretion of the officer, either be given a traffic citation as hereinafter provided, or be **taken without unnecessary delay before the proper magistrate** as specified in section 49-1115, Idaho Code, in any of the following cases:

1. When the person does not furnish satisfactory evidence of identity or when the officer has reasonable and probable grounds to believe the person will disregard a written promise to appear in court.

2. When the person is charged with a violation of section 49-843, Idaho Code, relating to vehicles transporting explosives.

3. When the person is charged with a violation of sections relating to the refusal of a driver of a vehicle to submit such vehicle to an inspection and test.

4. When the person is charged with a violation of sections relating to the failure or refusal of a driver of a vehicle to submit the vehicle and load to a weighing or to remove excess weight therefrom. (Emphasis added)

IDAHO CODE 49-1408

(formerly 49-1112)

Arrest of nonresident. -- All of the provisions of this chapter apply both to residents and nonresidents of this state, except the special provisions in this section which shall govern mis-

demeanor violations in respect to nonresidents under the circumstances herein stated.

(b) **A police officer** at the scene of a traffic accident may arrest without a warrant any driver of a vehicle who is a nonresident of this state and who is involved in the accident when, based upon personal investigation, the officer has reasonable and probable grounds to believe that the person has committed any misdemeanor offense under the provisions of this act in connection with the accident, and if the officer has reasonable and probable grounds to believe the person will disregard a written promise to appear in court.

(c) Whenever any person is arrested under the provisions of this section, he shall be taken **without unnecessary delay** before the proper magistrate as specified in section 49-1115, Idaho Code. (Emphasis added)

IDAHO CODE 49-1409

(formerly 49-1113)

Issuance of traffic citation. -- Whenever a person is halted by a police officer for a misdemeanor traffic violation and is not taken before a magistrate as required or permitted by this chapter, the officer shall issue a citation as provided by section 19-3901, Idaho Code, and by rule of the supreme court.

IDAHO CODE 49-1411

(formerly 49-1115)

Appearance before magistrate -- Procedure. -- A person shall be **taken before a magistrate** or given a traffic citation, and the charge thereafter processed as provided by rule of the supreme court. (Emphasis added)